

**SSI**

**Strategic Studies Institute  
U.S. Army War College**

**AD-A238 893**



**THE ARMY AND THE ENVIRONMENT:  
NATIONAL SECURITY IMPLICATIONS**

**DTIC**

**ELCIR**

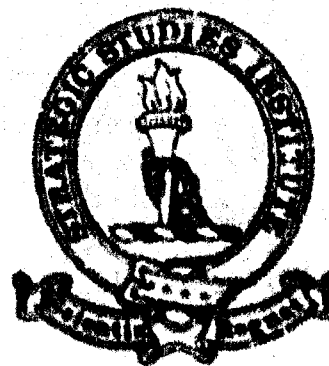
**JUL 27 1991**

**Lieutenant Colonel Kent Hughes Butts, Ph.D.**

**Best Available Copy**

**CONFIDENTIAL STATEMENT A**  
Approved for public release  
Distribution Unlimited

**91-06112**



UNCLASSIFIED

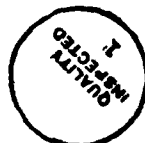
SECURITY CLASSIFICATION OF THIS PAGE

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
1a. REPORT SECURITY CLASSIFICATION UNCLASSIFIED			1b. RESTRICTIVE MARKINGS		
2a. SECURITY CLASSIFICATION AUTHORITY			3. DISTRIBUTION / AVAILABILITY OF REPORT Approved for public release; distribution unlimited		
2b. DECLASSIFICATION / DOWNGRADING SCHEDULE					
4. PERFORMING ORGANIZATION REPORT NUMBER(S) ACN 91007			5. MONITORING ORGANIZATION REPORT NUMBER(S)		
6a. NAME OF PERFORMING ORGANIZATION Strategic Studies Institute		6b. OFFICE SYMBOL (If applicable) AWCI	7a. NAME OF MONITORING ORGANIZATION		
6c. ADDRESS (City, State, and ZIP Code) U.S. Army War College Carlisle Barracks, PA 17013-5050			7b. ADDRESS (City, State, and ZIP Code)		
8a. NAME OF FUNDING / SPONSORING ORGANIZATION		8b. OFFICE SYMBOL (If applicable)	9. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER		
8c. ADDRESS (City, State, and ZIP Code)			10. SOURCE OF FUNDING NUMBERS		
			PROGRAM ELEMENT NO.	PROJECT NO.	TASK NO.
			WORK UNIT ACCESSION NO.		
11. TITLE (Include Security Classification) The Army and the Environment: National Security Implications					
12. PERSONAL AUTHOR(S) Butts, Kent Hughes					
13a. TYPE OF REPORT Final		13b. TIME COVERED FROM _____ TO _____	14. DATE OF REPORT (Year, Month, Day) 91 Jun 03		15. PAGE COUNT 25
16. SUPPLEMENTARY NOTATION					
17. COSATI CODES			18. SUBJECT TERMS (Continue on reverse if necessary and identify by block number)		
FIELD	GROUP	SUB-GROUP			
19. ABSTRACT (Continue on reverse if necessary and identify by block number) While there is much being written on why the environment is a national security issue, little has been done that addresses the impact of the environmental movement upon the traditional components of national security. This study begins the process of filling that void by examining the chief actors in the domestic environmental milieu, the Environmental Protection Agency, Congress and the States, and determining the surprisingly significant implications of their current initiatives for the United States Army.					
20. DISTRIBUTION / AVAILABILITY OF ABSTRACT <input checked="" type="checkbox"/> UNCLASSIFIED/UNLIMITED <input type="checkbox"/> SAME AS RPT. <input type="checkbox"/> DTIC USERS			21. ABSTRACT SECURITY CLASSIFICATION UNCLASSIFIED		
22a. NAME OF RESPONSIBLE INDIVIDUAL Marianne P. Cowling			22b. TELEPHONE (Include Area Code) (717) 245-3001		22c. OFFICE SYMBOL AWCI

# THE ARMY AND THE ENVIRONMENT: NATIONAL SECURITY IMPLICATIONS

Lieutenant Colonel Kent Hughes Butts, Ph.D.

June 3, 1991



Approval for	
ECIS	✓
DTIC	
Unprocessed	
Justification	
S/	
Distribution	
Availability Index	
Dist	Avail and/or Special
A-1	

## **NOTE**

The views expressed in this report are those of the author and do not necessarily reflect the official policy or position of the Department of the Army, the Department of Defense or the U.S. Government. This report is approved for public release; distribution unlimited.

## **COMMENTS**

Comments pertaining to this report are invited and should be forwarded to: Director, Strategic Studies Institute, U.S. Army War College, Carlisle Barracks, PA 17013-5050. Comments also may be conveyed directly to the author by calling commercial (717) 245-3001 or AUTOVON 242-3001.

## FOREWORD

The environment is now a national security issue of the first order. Popular support for the environment has focused international attention on not only the adverse global consequences for human health, but also the potential for international friction, and perhaps even conflict, arising from national policies, or absence thereof, concerning such issues as atmospheric change, resource exploitation, pollution and population growth. Domestically, this support is leading to environmental legislation that may well require all of the "peace dividend."

While there is much being written on why the environment is a national security issue, little has been done that addresses the impact of the environmental movement upon the traditional components of national security. This study begins the process of filling that void by examining the chief actors in the domestic environmental milieu, the Environmental Protection Agency, Congress and the States, and determining the surprisingly significant implications of their current initiatives for the United States Army.



Karl W. Robinson  
Colonel, U.S. Army  
Director, Strategic Studies Institute

## **BIOGRAPHICAL SKETCH OF AUTHOR**

LIEUTENANT COLONEL KENT HUGHES BUTTS is a Strategic Research Analyst with the Strategic Studies Institute, U.S. Army War College, and is the War College Environmental Course instructor. A 1973 graduate of the U.S. Military Academy at West Point, he holds a Master's in Business Administration from Boston University, an M.A. and Ph.D. in Geography from the University of Washington, and was a John M. Olin Post Doctoral Fellow in National Security at the Center for International Affairs, Harvard University. His Army assignments include company command in the 1st Armored Division, serving as the Defense and Army Attache to Uganda and Malawi, and Associate Professor in the Science Research Laboratory at the U.S. Military Academy. While on the faculty at West Point, he was the Course Director for the Environmental Issues and Conservation of Natural Resources Courses in what is currently the Department of Geography and Environmental Engineering. LTC Butts is co-author of the book, *Geopolitics of Southern Africa: South Africa as Regional Superpower*, published by Westview Press.

# **THE ARMY AND THE ENVIRONMENT: NATIONAL SECURITY IMPLICATIONS**

## **INTRODUCTION**

The end of the cold war has given rise to new areas of inquiry not previously associated with national security policy. Eminent foreign policy journals, for example, have called for the addition of the environment to the traditional military, political and economic issues in the formulation of the national security debate.<sup>1</sup> Their arguments typically point out the impact on national security of such important global issues as conflict over natural resources, overpopulation, and global warming. However, a more direct threat to U.S. national security could well occur as a result of the environmental movement's impact upon the Army.

The trend toward peace and cooperation between the superpowers occurred at the same time that concern for the environment became broadbased and gained the support of international leaders. The power of this new environmental movement is substantial and has important implications for the Department of Defense and the Army. The Army is coming under increased scrutiny by Congress and State and Federal regulatory agencies for its failure to comply with environmental laws. This scrutiny is intensifying and threatens the Army's budget, base expansion plans (see Figure 1), training, and ultimately, the Army's operational readiness. This report examines the major environmental initiatives confronting the military, the loss of sovereign immunity, Senator Nunn's Strategic Environmental Research Proposal, and the new Environmental Protection Agency (EPA) enforcement strategy, and evaluates their implications for the Army and its primary national security mission of defending U.S. interests around the globe.

Installation	State	Additional Acreage
Fort Irwin	California	300,000
Fort Riley	Kansas	100,000
Deepwoods	Maine*	720,000
Desoto	Mississippi*	116,000
Glasgow	Montana**	718,000
Hawthorne	Nevada*	586,000
Dugway	Utah	25,000
Yakima	Washington	63,000
Total Acreage		2,628,316

\* Army National Guard

\*\* Air and Army National Guards

Source: U.S. News and World Report, May 14, 1990

Figure 1. Desired Army Base Expansion.

## THE CHALLENGE AHEAD

The benign neglect of environmental issues and the limited funding of agencies such as the EPA and the Council on Environmental Quality by the Reagan Administration allowed Federal agencies such as the Department of Defense (DOD) and Department of Energy (DOE) to delay making major environmental commitments. However, changes have occurred that elevate environmental issues to a crisis level for the DOD and Army and demand the strategic, organizational and resourcing priorities that any serious threat to national security requires.

The Army and DOD have done much within their resources that indicates growing recognition of this threat and a genuine desire to be stewards of the environment, but more is required. Attitudes must change, not only because the environment is *in itself* a matter of national security concern, but also because



unconstrained enforced compliance will hamper the Army's ability to equip, train, and otherwise maintain preparedness for military missions. What is needed is a balanced approach—the Army (and DOD) must commit the time and resources to give evidence of full commitment to cleanup and prevention of further damage, and Congress has to provide funding and leeway to respond to these urgent requirements without serious impact upon the Army's ability to defend other U.S. interests at home and abroad.

Because environmental issues have been a popular media subject for decades, the recent upsurge of media reports on the environment may seem unimportant. However, three agents of environmental change are important because they have significant authority and have targeted the military services in a fashion that threatens the operational readiness of the Army. They are the EPA, Congress and the States.

*The Environmental Protection Agency.* The Reagan Administration so gutted the EPA that it became the subject of a series of Doonesbury cartoons depicting an EPA administrator considering suicide out of frustration. The demise of the cold war and the coming to power of the "Environmental President" has breathed new life into the agency. President Bush named knowledgeable environmentalist William Reilly, former Chief of the World Wildlife Fund and the Conservation Foundation, to head the EPA. Congress is attempting to elevate the EPA to cabinet status and make Reilly the first Secretary of the Environment.

Titles may be considered window dressing but funding is not. In an era of tight resources, the Bush Administration requested a 1991 EPA budget of \$5.6 billion, 12 percent above the 1990 request, that boosted staff and resources, with funding for *enforcement* programs rising 22 percent and State grant funding, with which the States implement and enforce their regulations, increasing 25 percent.<sup>2</sup> Congress then further increased the EPA budget to \$6 billion. The President's 1992 budget request again calls for a rise in the EPA budget, with the second largest program increase given to Federal facilities enforcement.

Enforcement, now the primary EPA initiative, is supported by Congress and the administration. Aggressive enforcement of Superfund laws allowed the EPA to collect over \$1 billion from the private sector in 1989.<sup>3</sup> Older EPA employees exhibited a willingness to work with violators, to educate and assist. Their goodwill efforts to counsel Federal facility violators was met by Federal agency legal maneuvers to avoid environmental compliance and Federal facility footdragging. The new crop of EPA administrators are young and aggressive. They operate under the EPA's management by objectives philosophy that rewards the writing of notice of violations (NOV). Because it is difficult to measure environmental compliance, the quantitative NOVs have increasingly become the enforcement method of choice. The average for company fines rose from \$48,000 in 1986 to \$195,000 in 1988, and the EPA will now bring treble-damage actions against companies refusing to meet administrative order compliance standards.<sup>4</sup> In FY 90-91, the EPA will add 2,000 people to its staff and many will work in the area of enforcement.<sup>5</sup>

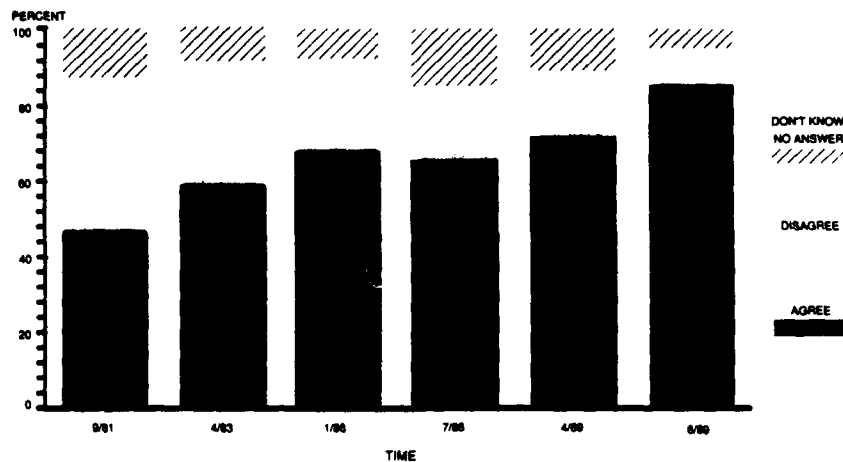
Particularly significant to the Army is the reorganization of EPA's Office of Enforcement. The responsibility for Federal facility compliance previously rested with the Federal Facilities Compliance Staff under the Office of Federal Activities, and the Federal Facilities Hazardous Waste Taskforce under the Office of Solid Waste and Emergency Response. These two groups have been joined to form the more powerful Office of Federal Facilities Enforcement (OFFE), under the Office of Enforcement and Compliance Monitoring (OECM). Under this new arrangement, the reporting scheme was changed so that regional counsels now report to OECM instead of the Office of the General Counsel, which does not place primary emphasis on enforcement.<sup>6</sup> This move reflects the aggressive countenance of younger EPA administrators, the criticism of EPA for being too lenient with Federal facilities, and the commonly-held attitude at EPA that the only way to get Federal facilities to move on the environment is through tougher enforcement. Thus EPA has organized to effectively and aggressively pursue Federal facilities and has resourced its initiative with personnel and funding. Regarding EPA's attitude

toward the military, the first OFFE Chief, Christopher Grundler, had this comment,

To say that complying with the law is going to hurt their warfighting capability is nonsense. We've never seen any figures to support that claim and we reject it categorically. The cost of environmental compliance ought to be the cost of doing business.<sup>7</sup>

*Congress.* Congress is charged with representing its constituents and contributing to the leadership and well-being of the nation. To execute these missions, legislators must remain in office. Sometimes doing what contributes to the well-being of the nation runs counter to the popular opinion of a congressman's constituents and this may lead to a moral dilemma. However, this is not always the case. On occasion, issues present themselves that are both popular with the American people and in the best interest of the nation. When this occurs, Congress (now in a win-win situation) may be expected to behave as if responding to heavenly guidance, and champion the issue as if it were the *Word*. Today the environment is just such an issue. Those individuals or agencies that fail to recognize the political salience of environmental issues invite a loss of support from the American people and the intense scrutiny of congressmen seeking to demonstrate their allegiance to the popular cause.

In the early 1970s the environment was wrongly identified with liberal causes and lacked mainstream popular support. As late as 1981 the percent of people supporting the concept that the environment was sufficiently important to warrant high and costly standards was roughly equalled by those who disagreed, nearly 45 percent. By 1989, those supporting high-cost environmental standards exceeded 80 percent, while those disagreeing were less than 20 percent (see Figure 2). The environment had become a mainstream issue that politicians oppose at their peril. Newspapers in State capitals now have regular environmental sections in which they list the environmental voting records of the State's senators and representatives. Those failing to vote for environmental issues are characterized as having *poor* voting records. The appeal of these issues is so profound that congressional committees on consumer product safety are conducting investigations into



Statement: The Environment should be a high priority regardless of cost.

Source: Based on a recent New York Times poll, and 6 New York Times/CBS polls.

**Figure 2. Significant Increases in Public Concern.**

the impact of consumer products on the ozone layer. The political appeal of the environment is best exemplified by Democratic presidential candidate, Senator Albert Gore of Tennessee. With public opinion polls showing that Americans would place environmental protection over economic growth by a two-to-one margin, he has dropped the issue of arms control and based his bid for the presidency on the environment, using every opportunity to champion an environmental cause while calling for a "strategic environmental initiative".<sup>8</sup>

The pro-environment milieu has changed the focus of Congress. Evidence of this change is clear. Re-regulation by government is now a growing trend. Congress, reflecting criticism concerning major problem areas such as the savings and loan crisis as well as the environment, is proffering major new regulatory legislation on health care, the disabled, and clean air, with seemingly little regard for its expense. Compliance with the revisions to the 1977 Clean Air Act, for example, may cost U.S. business and utilities \$20 billion per year.<sup>9</sup>

Another trend is eco-taxes, levies on hazardous waste, acid rain, chlorofluorocarbons and other forms of pollution. Popular in Japan and Europe, the proposed environmental taxes are being referred to as the "wave of the future" and have the support of powerful politicians; Representative Dan Rostenkowski, Chairman of the House Ways and Means Committee, called for the collection of \$20 billion in environmental taxes over a 5-year period.<sup>10</sup> The possibility of effecting these sweeping environmental laws was greatly enhanced in June when President Bush renounced his electoral pledge of no new taxes. The tax question is no longer whether, but which and how much, and the environment is at the top of Congress' list.

Today's congressional support for the environment is broad-based, and has serious implications for the Army. Senator Sam Nunn, Chairman of the Senate Armed Services Committee, a realist and long-time supporter of DOD, has led a powerful group of senators in proposing a strategic shift of defense funds to the study of the environment. The Strategic Environmental Research Proposal calls for a transfer of military forces, intelligence hardware, and research and development (R&D) funds to environmental cleanup, atmospheric and oceanographic monitoring, and the conversion of key elements of the defense industry to the production of environmental cleanup technology. The latter proposal is designed to reduce the impact of defense reductions on industry and allow U.S. business to compete in the growing worldwide pollution control market. As explained by Senator Nunn, the logic of the proposal is rooted in the fact that DOD and DOE

have created radioactive, toxic and mixed waste dumps and repositories that pose the risk of major contamination of soil, ground water and surface water.<sup>11</sup>

Particularly noteworthy is the argument that the behavior of DOD and DOE, specifically their failure to comply with environmental law, has threatened U.S. internal national security to such a degree as to warrant a significant transfer of resources from the external military threat to environmental cleanup. *Congress is stating clearly that the environment is now a national security issue of the first order.*

Encouraged by this surge of environmental popularity and the complaints of frustrated State enforcement agents, Congress began to turn its attention to Federal facilities and the efforts of government agencies to comply with environmental regulations. It commissioned a body of General Accounting Office (GAO) reports on these facilities. What they frequently found was environmental neglect. DOD and DOE facilities had generally poor environmental records and, in the unusually important medium of toxic and hazardous waste, had often ignored Congress. For example, in the GAO report to the Chairman of the Subcommittee on Water and Power Resources entitled *Water Pollution: Stronger Enforcement Needed to Improve Compliance at Federal Facilities*, these facilities were found to have a noncompliance rate for priority pollution program requirements double the rate of non-Federal industrial facilities. GAO stated that the fundamental reason for this high rate of noncompliance was the "low priority" accorded to compliance with water pollution regulations. The report further related that of all Federal agencies, the Army had the most noncompliant facilities.<sup>12</sup>

An April 1990 GAO report that addressed Federal hazardous waste facilities (those subject to the Resource Conservation and Recovery Act (RCRA) regulations) pointed out that the Army was the leading owner of such facilities and found that only 43 percent had completed their required hazardous waste assessments.<sup>13</sup> Yet another GAO report, to the Committee on Governmental Affairs, criticized the three services for not aggressively identifying either the types or volume of low-level nuclear waste produced or disposed of by military installations.<sup>14</sup> Thus, Congress found that Federal facilities, frequently those of DOD and the Army, were not the role models of environmental compliance that it had expected.

This occurred for several reasons. The lack of widespread popular environmental support in the early 1980s had not encouraged Congress to make the review of Federal facility environmental compliance a top priority; the primary national security roles of DOE and DOD as cornerstones of the military buildup strategy, used to great effect against the Soviet Union by the Reagan Administration, had much higher priority than

environmental compliance; the Department of Justice, led by Mr. Edwin Meese, intervened on behalf of both DOE and DOD to argue that sovereign immunity protected Federal agencies from penalties associated with the application and enforcement of State and Federal environmental laws.

The Department of Justice has narrowly interpreted statutory provisions of the Federal environmental laws, such as Section 6001 of the RCRA, to uphold sovereign immunity for Federal agencies. Justice' aggressive use of the theory of sovereign immunity and the unitary theory of the executive has prevented the States and EPA, respectively, from suing Federal agencies and imposing the same orders, fines and penalties used for noncompliance against private entities.<sup>15</sup> The courts have generally upheld these arguments and effectively stripped State and Federal enforcement agencies of meaningful powers. As successfully argued by the Department of Justice, regardless of poor or noncompliance by Federal facilities, the regulatory authority of EPA and the States is limited; RCRA does not give States the powers of civil penalties; and administrative enforcement orders are not binding RCRA requirements upon Federal facilities.<sup>16</sup> Unable to sue sister agencies, EPA has been forced to employ the much more lenient and lengthy Federal facilities compliance agreements, which have largely failed to bring Federal facilities into compliance. As explained by Jane F. Barrett, Chief Prosecutor of three Department of the Army civilians at Aberdeen Proving Ground for criminal violations of environmental laws,

I can't tell you the number of times that. . . State inspectors would come to my office and say, "I don't know what to do about Navy, or Army, or you name it Federal facility. I go in and tell them you are breaking the law, I tell them they need a spill control plan, they need this, they just shrug." That has got to change.<sup>17</sup>

Congress and State officials now believe that Federal facilities will not comply with environmental laws until they experience the full weight of enforcement provisions faced by State and municipal entities and private industry. Accordingly, legislation introduced in both the House (HR 1056) and Senate (S 1140) during the 101st Congress would have stripped

<b>Regulation</b>	<b>Penalty</b>
<b>Clean Air Act</b>	<b>\$25,000 Fine/1 Year Prison</b>
<b>Clean Water Act</b>	<b>\$1,000,000 Fine — Installation \$250,000 Fine/3 Years Prison — For Individual</b>
<b>RCRA (Hazardous Waste)</b>	<b>\$1,000,000 Fine — Installation \$250,000 Fine/15 Years Prison — For Individual</b>
<b>CERCLA (Superfund)</b>	<b>\$50,000 Fine/5 Years Prison</b>
<b>Toxic Substances Control Act</b>	<b>\$1,000,000 Fine</b>
<b>Safe Drinking Water Act</b>	<b>\$1,000,000 Fine — Installation \$250,000 Fine/3 Years Prison — For Individual</b>
<b>California Water Code</b>	<b>\$15,000 Per Day</b>
<b>California Health &amp; Safety Code</b>	<b>\$25,000 Per Day</b>

Source: Weyerhaeuser Corporation

**Figure 3. Environmental Regulations and Maximum Penalties.**

Federal agencies of the last vestiges of their sovereign immunity, exposing noncompliant facilities to civil or administrative fines and penalties, and further exposing officers (installation commanders) to criminal sanctions including fines and imprisonment.<sup>18</sup> (See Figure 3.)

The implications of the loss of sovereign immunity would be far-reaching. Army installation commanders would be increasingly vulnerable to criminal penalties and installations would be increasingly targeted by legal enforcement orders that can and will threaten the operations, training and readiness of Army units. Moreover, as written, HR 1056/S 1140 would have undermined DOD's current, "worst first" prioritized cleanup program by allowing the most aggressive State enforcement agencies to dominate cleanup emphasis. Thus, instead of spending scarce Army resources on a service-wide strategy for cleanup and compliance or



operational readiness, they would be directed into fines and penalties.<sup>19</sup>

The Army and DOD brought this upon themselves by abusing sovereign immunity. In Joliet, Illinois, for example, the city paid \$30,000 in RCRA violation fines while the Army ammunition plant used sovereign immunity to delay compliance for 2 years.<sup>20</sup> As volumes of congressional testimony make clear, Joliet is but one of many Army, DOD and DOE installations that has avoided its responsibilities for the safety and health of the American populace. Stripped of the protection of the cold war threat, the Army must now deliver on environmental issues. It may well do so without the shield of sovereign immunity and the previous good will of many who have now come to believe that the Army has not moved quickly enough to correct its environmental problems.

The legislative initiatives of HR 1056/S 1140 are only one salient of the environmental front facing the Army. The House Subcommittee on Employment and Housing has introduced legislation that would impose criminal penalties and triple fines for willful violation of Federal health and safety regulations.<sup>21</sup> As many as 15 congressional committees or subcommittees have direct influence over DOD's environmental program and many more tangentially-related committees could expand their focus to include DOD if they desired. With 352 pieces of environmental legislation proposed by the 101st Congress, the potential is great for Congress to keep DOD and the Army on the defensive.<sup>22</sup>

Congress is no longer divided along the familiar liberal-conservative, social issues-defense issues lines. DOD supporters like Senator Nunn are making it clear that the era of congressional support for DOD attempts at avoiding environmental compliance is over. As stated by Representative Richard Ray, Chairman of the Environmental Restoration Panel of the Armed Services Committee, the military's environmental problems are "second only to outright conflict,"<sup>23</sup> and "environmental restoration now has to move into the forefront of almost everything else short of a national emergency."<sup>24</sup> Bipartisan support exists for legislation that parents DOD, treating it as a recalcitrant child. This support

reflects the fact that Congress views DOD and the Army as lawbreakers that have failed to identify their environmental concerns; have neglected to inform Congress of serious environmental problems or request funding for their cleanup; have covered up problems at Federal facilities; and lack sufficient interest to monitor environmental developments in Congress and tell initiators when laws don't make sense. Nothing DOD or the Army has done has convinced Congress that they are serious about making the environment a high priority. Thus, Congress believes that it has no choice but to take the responsibility away from DOD and the Army. As explained by Representative Ray, "The problem is that if [the Pentagon] does not give this priority, we'll find legislation like 1056 that will force them to spend money anyway."<sup>25</sup>

*The States.* Under the Reagan federalism of the 1980s, the Federal Government essentially abdicated its leadership position on environmental issues and the States stepped in. When State governments realized that Federal regulatory and enforcement initiatives would not be sufficient to deal with the exponential discoveries of complex and recurrent environmental and health problems, they took corrective actions. These actions wrested the initiative on many environmental issues away from Congress and have established precedents with national security implications. Because this growth in States' assertiveness complements their goals, both Congress and the EPA have encouraged the States' increased environmental leadership, thus enhancing State power to affect the activities of Army installations.

National security has already been impacted by State environmental leadership. Production of nuclear weapons and nuclear power, for example, is greatly complicated by State level public policy decisions. In 1989, South Carolina Governor Richard Riley persuaded Congress to approve a long delayed plan to make regions responsible for their own nuclear waste by threatening to close the only low-level nuclear waste dump in the eastern United States.<sup>26</sup> Encouraged by Riley's success and the popular local rallying cry of "not in my backyard," other governors made similar decisions with increased national security implications.

DOE's Rocky Flats Plant is the sole source supplier of purified plutonium and produces the triggers for America's nuclear weapons. Its location in the environmentally sensitive Rocky Mountain area and the poor management of the facility that resulted in an FBI raid on the plant as part of a criminal investigation for environmental laws violations have made Rocky Flats the region's environmental cause celebre, and a litmus test for governors. After the raid, Colorado pressured DOE into signing an agreement that set an artificial limit of 1,601 cubic yards on the amount of radioactive plutonium waste that the facility could store. If this limit is exceeded, enforcement provisions could allow the State to close the plant. DOE had been storing Rocky Flat's waste in temporary facilities in Idaho, pending completion of a costly waste isolation plant in New Mexico. When the opening of that plant was delayed, Idaho Governor Cecil Andrus "banned" further shipments of this nuclear waste to his State. Although there was no legal basis for his ban, the Federal Government did not challenge this precedent-setting decision.<sup>27</sup> Instead of asserting its powers, the administration went begging, seeking other States in which to store the nuclear waste. Tennessee, Colorado, Nevada, South Carolina, New Mexico, Washington and Idaho all refused. Efforts to store the waste at military installations such as the Pueblo Army Depot have engendered severe public opposition that complicated efforts to obtain storage permits. Although the President, under RCRA legislation, has the authority to waive the storage limit and the permit requirements, the same public environmental support that prevented a Federal challenge to the Andrus ban makes such a waiver unlikely.<sup>28</sup> Thus the States have successfully established the precedent of challenging Federal power on environmental issues that have a direct impact on national security.

The States have expanded their environmental programs, staffed them with good people, funded them well, and achieved impressive results. When Congress struggled with competing benefit cost calculations that slowed its effort to rewrite the Clean Air Act, eight eastern States adopted California's high standards for auto emissions. Because this placed nearly 30 percent of the U.S. automobile market under the more strict

standards, the auto industry's opposition was overcome and Congress followed the States' lead in adopting stringent national air pollution control standards. Similarly, when States established tougher liability control measures associated with oil spills and their cleanup, Congress passed legislation that allowed these measures to stand.<sup>29</sup>

It appears that Congress adapted to the weak environmental leadership of the administrations by developing a strategy of allowing the States to take the lead on many environmental issues. For example, South Carolina had allowed the burial of hazardous waste such as arsenic, lead and mercury. Many States did not, and 32 States had been shipping their hazardous waste to South Carolina for burial. In 1989, South Carolina Governor Carroll Campbell closed his State's dump to shipments from these States. Shortly thereafter, Alabama also banned 22 States having no hazardous waste disposal facilities from using its landfill.<sup>30</sup> The bans violate the Constitution's interstate commerce clause; however, Congress has not sought to become proactive in this area, in part because the bans force Federal and State leaders to confront serious environmental problems that demand resolution.<sup>31</sup>

The trend toward States' assertiveness has caused environmental groups to increasingly target State legislators. Because less money is required to defeat them, state legislators do not have the seeming guarantee of reelectability enjoyed by Congress. The vulnerability of these officials has made State legislatures more responsive to environmental pressure groups and State legislatures are generating new environmental laws and strong regulations with alacrity. Over 20 States have now established their own groundwater pollution programs. In 1988-89, State legislatures passed 129 product and container recycling laws, and several States have passed measures requiring the use of recycled paper. Other States are pressuring industry to minimize the use of hazardous materials and legislating against the use of chlorofluorocarbons.<sup>32</sup> The South Carolina legislature had 10 additional hazardous waste measures pending when Governor Campbell implemented his ban. The strategy of the

environmental groups is to have sufficient States pass key environmental measures to force their adoption at the national level.<sup>33</sup>

As Congress has been less inclined to impose national environmental standards on the States, State-based entities have taken on heightened national importance. The two most influential are the National Governors' Association (NGA) and the National Association of Attorneys General (NAAG). These groups bring political clout and technical expertise to the debate on national environmental standards and are taking an increasingly active role in lobbying and enforcement. Moreover, they are sharing information on the most effective measures for enforcing environmental compliance upon Federal facilities. Lessons learned from the prosecution of the Army civilians at Aberdeen, for example, will benefit subsequent criminal prosecution cases in other States. Lawsuits to require cleanups at Federal facilities have been initiated by Washington, California, Colorado, Maine, Minnesota and Ohio. Because States and municipalities are subject to EPA sanctions, but Federal facilities (often among the top hazardous waste generators in their States) presently are excluded via their sovereign immunity, the NGA and NAAG have played major roles in lobbying for the passage of HR 1056 and S 1140. In opposing Justice's narrow interpretation of sovereign immunity, the NGA-NAAG Task Force on Federal Facilities recommended that:

1. Congress should clearly waive Federal sovereign immunity from the application and enforcement of Federal and State environmental laws, and
2. Congress should enact legislation to improve USEPA's ability to regulate other Federal agencies.<sup>34</sup>

## **IMPLICATIONS**

The shift of enforcement power to State environmental agencies, loss of sovereign immunity, and EPA's shift to an enforcement posture have profound implications for the Army. No longer protected by common national standards, Army installations would be required to meet State and local

environmental standards, however severe or costly. If HR 1056/S 1140 (or similar bills) are enacted as currently proposed, aggressive States could well reprioritize Army cleanup programs through fines and penalties and leave the Army little choice but to divert significant funding from military programs and relocate its training facilities to less appropriate, but more environmentally tolerant, States. The failure of Colorado to sign the interagency agreement to clean up the Rocky Mountain Arsenal and its insistence that the installation be cleaned up to residential standards could cost the Army an additional \$3 to \$4 billion, and set a precedent for other States to follow.<sup>35</sup> This type of State behavior is the coming trend and, together with an increasingly hostile Congress and EPA, poses a major threat to the Army's operational freedom and budget.

The costs of cleanup for the Army's toxic and hazardous waste sites cannot be accurately estimated. Projections in DOD's February 1990 Defense Environmental Restoration Program are understated and misleading, showing DOD cleanup costs peaking at under \$1.2 billion in 1996.<sup>36</sup> At this time, not all sites are known; new sites are regularly being discovered. In FY90 the Army budgeted \$244 million to clean up toxic and hazardous waste sites; for FY91 cleanup funding rose to \$307 million, an increase of 26 percent. The Army is expected to spend between \$5 and \$10 billion in the next 15 years to clean up its toxic and hazardous waste. If sovereign immunity is lost, aggressive State enforcement could drive this figure dramatically upward.

A respected, EPA in-house estimate places the cost of cleaning up all Army properties at \$250 billion.<sup>37</sup> The standards which remedial action must meet are constantly being raised and cleanup costs are rising exponentially. For example, hazardous waste disposal costs in the early 1980s were \$25-\$50 per barrel. Today they average \$200-\$400 and are expected to rise to \$1,000 per barrel by 1995.<sup>38</sup> The Department of Energy estimates of the 5-year costs of cleaning up its nuclear industry have risen 50 percent in the last year alone.<sup>39</sup> Moreover, the proper cleanup of many sites will require new technology for which the research and development are expensive and not yet initiated. In fact, environmental cleanup

is a bottomless pit into which the Army can pour virtually every dollar of its environmental funds and realize little gain in credibility with the environmental lobby, Congress or the regulatory agencies.

At a time when major reductions in the Army budget and force structure have already been mandated, the opportunity costs, in terms of weapon systems procurement, training and operational readiness associated with such environmental cleanup spending, could be debilitating. Another area where the Army is significantly affected by environmental concerns is training. The substitution of simulation for realistic on-the-ground training may be mandated for such diverse reasons as noise pollution, habitat destruction, soil erosion, opposition to base expansion and rising fuel costs.

The initiators of current environmental laws did not foresee their negative impact on the military element of U.S. national security. Just as time proved the original \$1.6 billion Compensation and Liability Act (Superfund) inadequate, time is also revealing many unanticipated consequences in a decentralized approach to the environment that need redressing. The Army is not alone in confronting choices between performing its strategic mission and full environmental compliance; the other services and DOE are similarly affected. Only Congress has the power to weigh national security risks against national security benefits and separate the environmental wheat from the chaff. But, it is also clear that popular support for the environment is pushing Congress to take strong, pro-environmental positions. If the Army and DOD are not to lose the shield of sovereign immunity as the result of an increasing stream of state and local fines and penalties, they must become proactive with Congress and the public, making clear the tradeoffs in current and future operational readiness associated with environmental legislation. The Army is not a large corporation that can pass along the costs of environmental compliance to consumers through higher product prices. It has a finite budget with which to provide a service for which there is no quantifiable value and no substitute.

The Army and DOD are embracing the environmental ethic espoused by the American people. They have done much to improve their environmental programs and they must do more. A sound environmental program is in the national interest. It would be one of history's great ironies to see the hard won prestige of the Army that resulted from the Gulf War sacrificed in a maze of environmental litigation. The Army can live with the new environmental ethic provided that it engages in direct dialogue with local and Federal agencies to ensure that well-intended environmental legislation does not threaten national security instead. It is time to actively debate where the proper balance may lie.

## ENDNOTES

1. See, for example, Jessica Tuchman Mathews, "Redefining Security," *Foreign Affairs*, Vol. 68, No. 2, Spring 1989.
2. Mark L. Goldstein, "Green Politics," *Government Executive*, May 1990, p. 8.
3. *Ibid.*, p. 10.
4. "Environmental Crime: Polluters Beware," *The Economist*, April 7, 1990, p. 38.
5. Goldstein, p. 9.
6. "EPA Enforcement Reorganization Nears Approval Despite Discontent in Regions," *Inside EPA*, April 13, 1990, p. 4.
7. David C. Morrison, "Pentagon Polluters," *The National Journal*, July 1, 1989, p. 1691.
8. "Altruism and Albert Gore," *The Economist*, June 23, 1990, p. 26.
9. "Regulating American Business: Do the Right Thing," *The Economist*, June 2, 1990, p. 74.
10. Howard Gleckman and Vicky Cahano, "Will Eco-Tax Fervor Sweep Congress Off Its Feet?", *Business Week*, April 30, 1990, p. 24.
11. Senator Sam Nunn, *Strategic Environmental Research Program*, Senate Floor Speech, June 28, 1990. See also, Patrick E. Tyler, "Propose Shift of Defense Funds to Study Environment," *The Washington Post*, June 29, 1990, p. A7.



12. General Accounting Office, *Water Pollution: Stronger Enforcement Needed to Improve Compliance at Federal Facilities* (GAO/RCED-89-13), Washington: United States General Accounting Office, December 1988, pp. 4-5.

13. General Accounting Office, *Hazardous Waste: Status and Resources of EPA's Corrective Action Program* (GAO/RCED-90-144), Washington: United States General Accounting Office, April 1990, p. 24.

14. General Accounting Office, *Nuclear Regulation: The Military Would Benefit From a Comprehensive Waste Disposal Program* (GAO/RCED-90-96), Washington: United States General Accounting Office, March 1990, p. 16.

15. Thomas P. Looby, Director, Office of Health and Environmental Protection, Colorado Department of Health, in *Federal Facility Compliance Act of 1989, Hearing Before the Committee on Environment and Public Works on S.1140*, May 2, 1990, 101st Congress, 2d Session, Washington: U.S. Government Printing Office, 1990.

16. Michael Donelly and James G. Van Ness, "The Warrior and the Druid—The DOD and Environmental Law," *Federal Bar News and Journal*, Vol. 33, No. 1, January 1986, pp. 37-43. The importance of sovereign immunity in the enforcement of RCRA at Federal facilities is well presented by the Honorable James E. Tierney, Attorney General, State of Maine, and Mr. Jack A. Van Kley, Chief Litigator, Environmental Enforcement Section, Ohio Office of the Attorney General, in *Federal Facility Compliance Act of 1989, Hearing Before the Committee on Environment and Public Works on S.1140*, May 2, 1990, 101st Congress, 2d Session, Washington: U.S. Government Printing Office, 1990.

17. Jane F. Barrett, Assistant U.S. Attorney, "The Aberdeen Case," Speech to the Environmental Compliance Task Force of the U.S. Department of Commerce, May 15, 1989.

18. Richard B. Stewart, Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, in *Federal Facility Compliance Act of 1989, Hearing Before the Committee on Environment and Public Works on S.1140*, May 2, 1990, 101st Congress, 2d Session, Washington: U.S. Government Printing Office, 1990.

19. *Ibid.*, p. 7. Although HR 1056 and S 1140 expired with the 101st Congress, it is fully expected that similar legislation addressing sovereign immunity will be introduced in the 102d Congress.

20. Morrison, p. 1691.

21. Frank Swoboda, "Stiffer Safety Fines Eyed for Firms," *The Washington Post*, May 2, 1990, p. A5.

22. Colonel Joyce E. Peters, Legislative Counsel, "Environmental Legislation Proposed in the 101st Congress," *OCLL-IL Memorandum*, August 27, 1990.

23. Thane Grauel, "Dishonorable Discharges: The Military's Peacetime War on Planet Earth," *E Magazine*, July/August 1990, p. 43.

24. Morrison, p. 1690.

25. *Ibid.*

26. "Hazardous Waste: Not here, Y'Hear," *The Economist*, March 18, 1989, p. 27.

27. Interview with Ed R. Heinz, Director of Communications, Rocky Flats Plant, Golden, CO, December 4, 1989.

28. Keith Schneider, "U.S. Seeks to Store Nuclear Waste at Army Bases to Save Plutonium Plant," *The New York Times*, November 10, 1989, p. A27. See also, "Romer Drops Pinon Area Waste Plan: Opposition by Citizens Crucial to his Decision," *Denver Post*, October 28, 1989, p. 1B. To grant such a waiver, the President must determine it to be "in the paramount interest of the United States." Moreover, no exception may be granted due to lack of funds unless the Congress failed to provide those funds after a request for them in the President's budget. Finally, an exception is good for only a year, subject to renewal after new determinations. See 42 U.S.C. 6961.

29. Margaret E. Kriz, "Industries Worry Over State Environmental Activism," *The National Journal*, December 9, 1989, p. 2989.

30. *Ibid.*, p. 2991.

31. A recent case ruled that such bans do indeed violate the Constitution's interstate commerce clause. See *Government Supplies Consolidating Services, Inc. v. Indiana*, No. IP 90-303-C (S.D. Ind., December 27, 1990), reported in *BNA Environmental Reporter*, Vol. 21, No. 76, January 4, 1991, p. 1619.

32. Kriz, p. 2992.

33. *Ibid.*

34. Christine O. Gregoire, Director, Department of Ecology, State of Washington, in *Federal Facility Compliance Act of 1989, Hearing Before*

*the Committee on Environment and Public Works on S. 1140*, May 2, 1990, 101st Congress, 2d Session, Washington: U.S. Government Printing Office, 1990.

35. Interview with Donald L. Campbell, Deputy Program Manager, Rocky Mountain Arsenal, and Major Larry Rouse, Army Environmental Law Division, Commerce City, CO, December 5, 1989. Telephone interview with Major Larry Rouse, April 19, 1991. See also, Sandra D. Atchison, "The Toxic Morass In Denver's Backyard," *Business Week*, January 9, 1989, p. 46.

36. Defense Environmental Restoration Program, *Annual Report to Congress for Fiscal Year 1989*, Washington: Department of Defense, February 1990.

37. Army Science Board, *Final Report of the Ad Hoc Subgroup on Toxic and Hazardous Waste Management*, Washington: Assistant Secretary of the Army, Research Development and Acquisition, February 1990, p. 2-1.

38. Weyerhaeuser Environmental Affairs Team, *Environmental Excellence*, Tacoma, Washington, Winter 1989, p. 1.

39. Keith Schneider, "New Mission at Energy Department: Bomb Makers Turned to Cleanup," *The New York Times*, August 17, 1990, p. A17.

ADMINISTRATIVE PAGE

Major General Paul G. Corjan  
Commandant

\*\*\*\*\*

**STRATEGIC STUDIES INSTITUTE**

Director  
Colonel Karl W. Robinson

Author  
Lieutenant Colonel Kent Hughes Butts

Editor  
Mrs. Marianne P. Cowling

Secretary  
Ms. Rita A. Rummel

Best Available Copy

\*\*\*\*\*